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Attorneys for Creditor
 Debt Acquisition Company of America V

UNITED STATES BANKRUPTCY COURT

District of Nevada

| | | |
|---|---|----------------------------------|
| In re |) | Case No. BK-S-06-10725 LBR |
| USA COMMERCIAL MORTGAGE COMPANY |) | |
| Debtor. |) | DECLARATION OF HOWARD JUSTUS |
| |) | IN OPPOSITION TO DEBTOR'S MOTION |
| In re |) | FOR APPROVAL OF PROCEDURES |
| USA CAPITAL REALTY ADVISORS, LLC |) | REGARDING ASSIGNMENTS OF |
| Debtor. |) | LENDERS' DIRECT INTERESTS IN |
| |) | LOANS |
| |) | (AFFECTS USA COMMERCIAL |
| |) | MORTGAGE) |
| In re |) | |
| USA CAPITAL DIVERSIFIED TRUST FUND, LLC |) | DATE: December 19, 2006 |
| Debtor. |) | |
| |) | TIME: 10:00 a.m. |
| In re |) | |
| USA CAPITAL FIRST TRUST DEED FUND, LLC |) | |
| Debtor. |) | |
| In re |) | |
| USA COMMERCIAL MORTGAGE COMPANY |) | |
| Debtor. |) | |
| Affects: |) | |
| <input type="checkbox"/> All Debtors |) | |
| <input checked="" type="checkbox"/> USA Commercial Mortgage Company |) | |
| <input type="checkbox"/> USA Capital Realty Advisors, LLC |) | |
| <input checked="" type="checkbox"/> USA Capital Diversified Trust Fund, LLC |) | |
| <input checked="" type="checkbox"/> USA Capital First Trust Deed Fund, LLC |) | |
| <input type="checkbox"/> USA Securities, LLC |) | |

1 I, Howard Justus, declare:


2 1. I am the President of Debt Acquisition Company of America V. I have personal
3 knowledge of the facts stated herein and could and would competently testify thereto if called as a
4 witness.

5 2. DACA began purchasing the interests of Direct Lenders in loans serviced by USA
6 Commercial Mortgage Company, the Debtor in Possession, in September, 2006. Depending upon the
7 perceived liquidity and risk associated with each such loan, DACA has purchased these interests for
8 cash in amounts ranging from 70% to 88% of the loan balance. DACA has so far accepted assignments
9 from a total of fifty Direct Lenders, of loan interests totaling approximately \$3.6 Million in principal
10 amount.

11 3. At the time that DACA began purchasing these loans, I was aware that the Debtor in
12 Possession had taken the position, in its Distribution Motion, that it had the right to recoupment of "due
13 from" amounts, also referred to as "Prepaid Interest," on a lender by lender rather than a loan by loan
14 basis. Accordingly, in order to allow the sale of the Direct Lender interests in spite of the uncertainty
15 created by the recoupment of the "due from" balances across several loans, DACA entered into an
16 escrow agreement with the Direct Lenders. Under the escrow agreement, a portion of the purchase price
17 is deposited into escrow. To the extent that the Debtor in Possession offsets a "due from" amount
18 against the transferred loan, the escrow balance will be paid to DACA. If the offset is against other non-
19 transferred loans, then to that extent the escrow balance will revert to the Direct Lender.

20 4. In asking that the Court establish procedures for the exercise of the Debtor's election,
21 as requested in the Motion, to make a one-time offset against a transferred loan, DACA does not admit
22 that such an offset is legally proper under the recoupment doctrine or otherwise, nor does DACA waive
23 any claim or defense in relation to those issues.

24 I declare under penalty of perjury under the laws of the United States that the foregoing is true
25 and correct and that this Declaration is executed on ^{December} ~~November~~ 5, 2006 at San Diego, California.

26
27 
28 HOWARD JUSTUS